

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 9843 of 2004(V)

PETITIONERS:

1. M.THAMPY CHERIAN, AGED 55 YEARS,
S/O. M.P.CHERIAN, TELECOM TECHNICAL ASSISTANT,
CSR EXCHANGE, KOCHI-16, RESIDING AT 29/1026,
JANATHA ROAD, VYTILA.
2. A.A.ABDUL KHADER, AGED 56 YEARS,
TELECOM TECHNICAL ASSISTANT, TELEPHONE EXCHANGE,
MALAYATTUR, RESIDING AT ANJIKKATT HOUSE,
P.O.SOUTH VELLARAPPILLY, SREEMOOLA NAGARAM,
ERNAKULAM DISTRICT.
3. G.R.FRANCIS, AGED 56 YEARS,
S/O. M.R.FRANCIS, TELECOM TECHNICAL ASSISTANT,
A/C POWR, TELEPHONE EXCHANGE, PALARIVATTOM,
RESIDING AT 36/1448, SONSILA, NORTH JANATHA ROAD,
PALARIVATTOM, KOCHI 682 025.

BY ADV. SRI.P.P.JNANASEKHARAN

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, MINISTRY OF COMMUNICATIONS
NEW DELHI.
2. THE CHAIRMAN AND MANAGING DIRECTOR,
TELECOMMUNICATIONS, BSNL, STATESMAN BUILDING,
NEW DELHI.
3. THE CHIEF GENERAL MANAGER,
TELECOMMUNICATIONS, BSNL, KERALA CIRCLE,
THIRUVANANTHAPURAM.
4. THE PRINCIPAL GENERAL MANAGER, TELECOM,
ERNAKULAM, BSNL BHAVAN, KOCHI-682 016

BY ADV. SRI.K.KESAVANKUTTY, SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1- TRUE COPY OF THE ORDER OF TENURE TRANSFER NO.ST/EK-261/7(b)II/18 DATED 26.6.02 ISSUED BY THE 4T RESPONDENT
- EXT.P2- TRUE COPY OF THE ORDER NO.ST/EK-261/7(b)/01/39 DATED 16.8.02 ISSUED BY 4TH RESPONDENT
- EXT.P3- TRUE COPY OF THE ORDER NO.ST/(EK/261/7(b)/16 DATED 29.11.01 ISSUED BY THE FOURTH RESPONDENT
- EXT.P4- TRUE COPY OF THE REPRESENTATION DTED 31.12.03 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT
- EXT.P5- TRUE COPY OF THE ORDER DATED 26.2.04 ISSUED BY THE 4TH RESPONDENT TO THE 1ST PETITIONER
- EXT.P6- TRUE COPY OF THE LETTER DATED 16.2.02 RECEIVED BY THE 2ND PETITIONER FROM THE 4TH RESPONDENT

(TRUE COPY)

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.9843 OF 2004

Dated this the 18th day of December, 2007

JUDGMENT

Petitioners, while working as Telecom Technical Assistants, hereinafter referred to as 'TTAs', were transferred in public interest, by calling such transfers as 'tenure transfers of TTAs to highrange areas'. Thereby, each of them was transferred for a tenure of six months each with immediate effect, to the respective stations shown against their names. They were to be relieved immediately, without awaiting for a substitute. Following that, some of the petitioners were paid all allowances due to tenure transfers, while some are yet to be given such dues for a couple of months or so. Later on, the department took the view that those transfers were regular transfers and not tenure transfers and hence, the transferees were not entitled to any allowance, such transfer being treated as a tenure transfer. Resultantly, recovery was ordered. This has given rise to this writ petition.

2. According to the department, though the transfer orders state that they are tenure transfers, they have been made in public interest, to say, in the interest of service and that therefore, they are regular transfers, notwithstanding the nomenclature of tenure transfer.

3. A reading of the transfer orders ex facie shows that they are tenure transfers. Tenure transfers are those transfers which are made for a fixed particular tenure. Each of the transfer orders are for a fixed period of six months. The period for which the person concerned will have to work in the station to which he is transferred is also recorded in the transfer order itself. If it were regular transfers, as normally understood in service law, the transferring office is not to fix any particular tenure for the transfer. Use of the phrase 'in the interest of service' in the last paragraph of Ext.P1 and other documents is only to further emphasise that the tenure transfer is not at the request of the respective petitioner. If that were not, it would not be in the interest of service, by recognising the private interest and request of the personnel concerned. The result of this discussion is that the

transfers in question are tenure transfers and the transferees are entitled to all attendant benefits on account of such transfer. It is so declared.

4. The question whether the petitioners are entitled to tour traveling allowance or transfer traveling allowance would depend upon the question whether the transfers in question are tenure transfers. Having held that they are tenure transfers, the competent authority has to release the amounts in accordance with law.

Following the aforesaid declaration, all recoveries impugned in this writ petition are quashed and it is directed that any amount outstanding as allowance on account of the transfers in question as tenure transfers shall be released to the appropriate petitioners at the earliest. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.